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Defendants' Memorandum of Law in Support of Their Motion Pursuant to
Fed. R. Civ. P. 12(b)(6) and 12(f)

-----X
Defendants.

COLLEEN IP, INTELLECTUAL PROPERTY
LAW, P.C., and DONALD J. RANFT, as Aider
and Abettor,

Hon. Stephen C.
Robinson

-against-

Civil Action
No. 08 CIV 6274

Plaintiff,

MELODY M. LARocca,

-----X
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TABLE OF AUTHORITIES	ii
I. PRELIMINARY STATEMENT	1
II. BACKGROUND	2
III. ARGUMENT	3
A. PLAINTIFF FAILS TO ADEQUATELY PLEAD HER THIRD CAUSE OF ACTION INFILCTION OF EMOTIONAL DISTRESS	3
1. Plaintiff's Claim of Intentional Infliction of Emotional Distress is Time Barred and Must Be Dismissed Pursuant to FED. R. CIV. P. 12(b)(6)	3
2. Plaintiff's Claim of Intentional Infliction of Emotional Distress Must Be Dismissed Pursuant to FED. R. CIV. P. 12(b)(6) Because Plaintiff Fails to Plead Elements Necessary to State A Cause Of Action Upon Which Relief Can Be Granted	5
3. Plaintiff's Claim of Reckless Infliction of Emotional Distress is Time Barred and Must Be Dismissed Pursuant to FED. R. CIV. P. 12(b)(6)	7
4. Plaintiff Fails to State a Claim Upon Which Relief Can Be Granted For Negligent Infliction of Emotional Distress Pursuant to FED. R. CIV. P. 12(b)(6) as Against all Defendants	7
IV. CONCLUSION	9

TABLE OF CONTENTS

ii

<i>Campoverde v. Sony Pictures Entertainment</i> , No. 01 Civ. 7775, 2002 WL 31163804 (S.D.N.Y. Sept. 30, 2002).....	6, 8
<i>Carroll v. Bayerische Landesbank</i> , 150 F.Supp.2d 531 (2d Cir. 1999).....	5
<i>Conboy v. AT&T Corp.</i> , 241 F.3d 242 (2d Cir. 2001).....	6
<i>Corrections Officers Benevolent Ass'n of Rockland County v. Kralik</i> , 226 F.R.D. 185 (S.D.N.Y. 2005).....	10
<i>Forbes v. Merrill Lynch, Fenner & Smith, Inc.</i> , 957 F.Supp. 450 (S.D.N.Y. 1997).....	4
<i>Gorton v. Gittel</i> , No. 04 Civ. 0236, 2007 WL 2154193 (S.D.N.Y. June 22, 2007).....	5
<i>Kelly v. Chase Manhattan Bank</i> , 717 F.Supp. 227 (S.D.N.Y. 1989).....	8
<i>Klages v. Cohen</i> , 7 F.R.D. 216 (E.D.N.Y. 1947).....	9, 10
<i>Kounitz v. Staaten</i> , 901 F.Supp. 650 (S.D.N.Y. 1995).....	10
<i>Lipsky v. Commonwealth United Corp.</i> , 551 F.2d 887 (N.Y. 1976).....	10
<i>Lichtenstein v. Triarc Companies, Inc.</i> , No. 02 Civ. 2626, 2004 WL 1087263 (S.D.N.Y. May 14, 2004).....	5
<i>Mariani v. Consolidated Edison Co. of New York, Inc.</i> ,	

FEDERAL CASES

TABLE OF AUTHORITIES

iii

982 F.Supp. 267 (S.D.N.Y. 1997).....	4
<i>Mortise v. U.S.</i> , 102 F.3d 693 (2d Cir. 1996)	8
<i>Neufeld v. Neufeld</i> , 910 F.Supp. 977 (S.D.N.Y. 1996)	4
<i>Nevin v. Citibank, N.A.</i> , 107 F.Supp.2d 333 (S.D.N.Y. 2000)	8
<i>NN&R, Inc. v. One Beacon Ins. Group</i> , 362 F.Supp.2d 514 (D.N.J. 2005)	9
<i>Perks v. Town of Huntington</i> , 96 F.Supp.2d 222 (S.D.N.Y. 2000)	5
<i>Ponticelli v. Zurich Am. Ins. Group</i> , 16 F.Supp.2d 414 (S.D.N.Y. 1998)	6
<i>Rosen v. Texas Co.</i> , 161 F.Supp. 55 (S.D.N.Y. 1958)	10
<i>Smith v. Local 819 I.B.T. Pension Plan</i> , 291 F.3d 236 (2d Cir. 2002)	4
<i>Sowemimo v. D.A.O.R. Sec., Inc.</i> , 43 F.Supp.2d 477 (S.D.N.Y. 1999)	6
<i>Still v. DeBuono</i> , 101 F.3d 888 (2d Cir. 1996)	4
<i>Stuto v. Fleishman</i> , 164 F.3d 820 (2d Cir. 1999)	5
<i>US Alliance Federal Credit Union v. Cumis Ins. Soc., Inc.</i> , 346 F.Supp.2d 468 (S.D.N.Y. 2004)	4
<i>Wahlstrom v. Metro-North Commuter R.R.</i> , 89 F.Supp.2d 506 (S.D.N.Y. 2000)	5, 6

STATE CASES

<i>Dana v. Oak Park Marina, Inc.</i> , 230 A.D.2d 204, 660 N.Y.S.2d 906 (1997).....	7
<i>Dillon v. City of New York</i> , 261 A.D.2d 34, 704 N.Y.S.2d 1 (1st Dept. 1999).....	7, 8
<i>Freihof v. Hearst Corp.</i> , 480 N.E.2d 349, 65 N.Y.2d 135 (1985).....	6
<i>Howell v. New York Post Co., Inc.</i> , 612 N.E.2d 699, 81 N.Y.2d 115 (1993).....	5, 6
<i>Ruggiero v. Contemporary Shells, Inc.</i> , 160 A.D.2d 986, 554 N.Y.S.2d 708 (1990).....	6
FEDERAL STATUTES	
42 U.S.C. § 2000e, <i>et seq.</i>	1
FED. R. CIV. P. 12(b)(6).....	passim
FED. R. CIV. P. 12(f).....	passim
STATE STATUTES	
N.Y. EXEC. LAW § 296 (McKinney 2008).....	1

Defendants Collen IP, Intellectual Property Law, P.C. ("Collen IP") and Donald J. Ranft, as aider and abettor, ("Ranft", and collectively, with Collen IP, referred to as "defendants") submit this memorandum of law in support of their motion to dismiss plaintiff's third cause of action in her complaint (the "Complaint") entitled "Infliction of Emotional Distress" for failure to state a claim upon which relief can be granted pursuant to FED. R. CIV. P. 12(b)(6).

I. PRELIMINARY STATEMENT

Plaintiff has brought this suit against defendants seeking relief under Title VII, 42, U.S.C. Section 2000e, *et seq.* and New York Executive Law § 296 based upon her various allegations of being subject to sexual harassment in the workplace. In addition, plaintiff seeks damages against defendants sounding in tort, namely under several New York State law theories of infliction of emotional distress.

Plaintiff fails to recognize that even assuming, without conceding, intentional or reckless infliction of emotional distress were present, relief can not be granted on either of these claims because both are time barred. Under New York law, claims for intentional or reckless infliction of emotional distress are governed by a *one year* statute of limitations. No tolls apply in the instant case. The Complaint was filed on or about July 11, 2008. Plaintiff alleges in the Complaint that she was constructively discharged on March 12, 2007 – indeed no factual allegations are made for any conduct whatsoever after March 12, 2007. Accordingly, there are no set of facts on which plaintiff could possibly argue that the emotional distress claims was brought within one year from ANY conduct alleged in the complaint. Plaintiff's claim for

Defendant Collen IP is a law firm specializing in intellectual property practice. Defendant Ranft is an employee of Collen IP. Defendant Ranft is a non-equity, non-managing

II. BACKGROUND

months before she filed the Complaint. Plaintiff's substantive claim for infliction of emotional distress, along with the facts plaintiff alleges to support it, simply fail to state a claim. It is well settled that although claims of sexual harassment may, in certain, limited circumstances sustain a claim for intentional infliction of emotional distress, the standard in New York is extremely high. In fact, as is discussed in more detail in Section III.A.2., *infra*, New York courts consistently hold that in order to satisfy the rigorous standard needed to sustain a claim for intentional infliction of emotional distress in cases sounding in sexual harassment, an allegation of sexual battery is paramount.

At the outset, therefore, defendants respectfully note to the Court that (1) plaintiff's fails to make out a claim for infliction of emotional distress (intentional, reckless or negligent); (2) plaintiff's claim for infliction of emotional distress is unavailing because plaintiff cannot, and has not, set forth the requisite factual basis necessary to sustain this claim, including, *inter alia*, plaintiff's failure and inability to allege sexual battery in connection with this claim; and (3) plaintiff has not and cannot set forth facts sufficient to overcome the high level of scrutiny with which New York law obliges courts to pass on such claims – especially those alleged in connection with sexual harassment.

beyond doubt that the plaintiff can prove no set of facts in support of its claim which would
A motion to dismiss pursuant to Rule 12(b)(6) should be granted where "it appears

I. PLAINTIFF'S CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS TIME BARRED AND MUST BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(B)(6)

A. PLAINTIFF'S ALLEGATIONS FAILS TO ESTABLISH A CAUSE OF ACTION INFLICTION OF EMOTIONAL DISTRESS

III. ARGUMENT

action followed.

determination was made on this complaint and a right to sue letter was issued to plaintiff. This

filed a complaint with the New York State Division of Human Rights. No investigation or

September, 2008. Shortly after the summons issued from Village Court of Ossining, plaintiff

After multiple delays and adjournments in that matter trial is now scheduled for the end of

initial step by the Plaintiff resulted in a violation summons being issued to Defendant Ranft.

with an incident that Plaintiff claims occurred a full two months prior to her resignation. This

complaint, against Defendant Ranft, with the Ossining Village Police Department in connection

employment in March of 2007. Shortly after plaintiff resigned, Plaintiff filed a harassment

per hour. On June 6, 2006 she was given a raise of \$22.00 per hour. Plaintiff resigned her

or about March 6, 2006 plaintiff was hired to work part time for defendant Collen IP, at \$18.00

defendants as a client of the firm in relation to her business of selling and designing jewelry. On

Plaintiff Melody LaRocca was a part time employee who began her relationship with

Hershey, Pennsylvania, and 60% in New York.

partner who, throughout the time in question, split his time working 40% from his home office in

entitle it to relief.” *USAlliance Federal Credit Union v. Cumis Ins. Soc., Inc.*, 346 F. Supp. 2d 468, 469-70 (S.D.N.Y. 2004) (quoting *Still v. DeBuono*, 101 F.3d 888, 91 (2d Cir. 1996)). While the Court must accept as true the factual allegations in the Complaint and draw reasonable inferences in favor of the non-moving party in evaluating a motion under Rule 12(b)(6), “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Smith v. Local 819 I.B.T. Pension Plan*, 291 F.3d 236, 40 (2d Cir. 2002) (*internal quotations omitted*).

The statute of limitations for intentional infliction of emotional distress is one year. *See Forbes v. Merrill Lynch, Fenner & Smith, Inc.*, 957 F. Supp. 450, 455 (S.D.N.Y. 1997).

Plaintiff alleges that she was constructively discharged on March 12, 2007 (Complaint at ¶ 58). The Complaint was filed on or about July 11, 2008. Therefore, even assuming all allegations made in the complaint are true, plaintiff alleges no set of facts upon which relief can be granted. Plaintiff’s claim for intentional infliction of emotional distress became time-barred on March 12, 2008. This lawsuit was commenced nearly four months after the one-year statute of limitations on plaintiff’s intentional infliction of emotional distress claim expired.

The Complaint was filed on or about July 11, 2008. Plaintiff alleges in the Complaint that she was constructively discharged on March 12, 2007 – indeed no factual allegations are made for any conduct whatsoever after March 12, 2007. Accordingly, there are no set of facts on which plaintiff could possibly argue that the emotional distress claims was brought within one year from ANY conduct alleged in the complaint. Plaintiff’s claim for intentional infliction of emotional distress became time-barred on March 12, 2008 – nearly four months before she filed the Complaint.

Under New York law, "a claim of intentional infliction of emotional distress requires: (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress." *Gorton v. Gittel*, No. 04 Civ. 0236, 2007 WL 2154193 at *3 (S.D.N.Y. June 22, 2007) (quoting *Stuto v. Fleishman*, 164 F.3d 820, 827 (2d Cir.1999)) (*internal quotations omitted*). Although claims of sexual harassment can sustain a claim for intentional infliction of emotional distress, "[t]he standard in New York for extreme and outrageous conduct is incredibly high." *Carroll v. Bayerische Landesbank*, 150 F.Supp.2d 531, 538 (S.D.N.Y. 2001); *see also Howell v. New York Post Co. Inc.*, 81 N.Y.2d 115, 122, 612 N.E.2d 699 (1993) (standard for sustaining a claim for intentional infliction of emotional distress is "rigorous, and difficult to satisfy"). Moreover, Courts have held that to sustain a claim for intentional infliction of emotional distress in the sexual harassment context, *sexual battery should be alleged*. *See, e.g., Perks v. Town of Huntington*, 96 F.Supp.2d 222, 231 (S.D.N.Y. 2000) (*Lichtenstein v. Triarc Companies, Inc.*, No. 02 Civ. 2626, 2004 WL 1087263 (S.D.N.Y. May 14, 2004)); *Wahlstrom v. Metro-North Commuter R.R.*, 89 F.Supp.2d 506, 529 (S.D.N.Y. 2000); *Ponticelli v. Zurich Am. Ins. Group*, 16 F.Supp.2d 414, 441 (S.D.N.Y.1998) (*emphasis added*). Moreover, courts have held that even a mere "garden variety" assault will not suffice; the battery alleged must be *sexual in nature*. *See Sowemimo v. D.A.O.R. Sec., Inc.*, 43

2. PLAINTIFF'S CLAIM OF INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS MUST BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6) BECAUSE PLAINTIFF FAILS TO PLEAD ELEMENTS NECESSARY TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED

F.Supp.2d 477, 491 (S.D.N.Y. 1999) Indeed, “[c]ourts have observed that a plaintiff must allege sexual battery in order to survive . . . summary judgment in the sexual harassment context.” *Id.* In the Complaint, plaintiff’s allegations are that Ranft made unwelcome advances of a romantic or sexual manner. Even if those were taken as true, none of the alleged conduct even approached the level of conduct necessary to support this particular claim, which courts have characterized as so extreme and outrageous that it transcends the bounds of decency in a civilized society. *See Howell v. New York Post Co., Inc.*, 612 N.E.2d 699, 81 N.Y.2d 115, 122, (1993); *Freihof v. Hearst Corp.*, 480 N.E.2d 349, 65 N.Y.2d 135 (1985); *Ruggiero v. Contemporary Shells, Inc.*, 160 A.D.2d 986, 987, 554 N.Y.S.2d 708 (1990).

Moreover, plaintiff does not allege that Ranft committed any sort of sexual battery in connection with her emotional distress claim based on her allegations of sexual harassment. *See Sowemimo*, 43 F.Supp.2d at 491. In addition to allegations of Ranft’s verbal advances, plaintiff also must have alleged such conduct in order to make out a claim for intentional infliction of emotional distress. In any event, *none* of Ranft’s alleged conduct contained in plaintiff’s Complaint rises to the “incredibly high” level of extreme and outrageous behavior necessary to sustain a claim for intentional infliction of emotional distress. *Conboy v. AT&T Corp.*, 241 F.3d 242, 258 (2d Cir. 2001); *Campoverde v. Sony Pictures Entertainment*, No. 01 Civ. 7775, 2002 WL 31163804 (S.D.N.Y. Sept. 30, 2002) (conduct must be so outrageous and extreme “as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”).

Not only did the statute of limitations expire on any intentional infliction of emotional distress claim that plaintiff alleges, but because plaintiff did not and cannot include an allegation of sexual battery in conjunction with Ranft’s verbal advances, her cause of action sounding in

It is extremely difficult in New York to sustain a claim for negligent infliction of emotional distress. A plaintiff must allege conduct that was "so outrageous and extreme as to support a claim for emotional distress" (the same standard used in intentional infliction of

4. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS PURSUANT TO FED. R. CIV. P. 12(B)(6) AS AGAINST ALL DEFENDANTS

and must be dismissed pursuant to FED. R. CIV. P. 12(b)(6).
Accordingly, plaintiff's claim for reckless infliction of emotional distress is time barred expired.
2008, and the present suit commenced nearly four months after the one-year statute of limitations plaintiff's claim for reckless infliction of emotional distress became time-barred on March 12, 12, 2007 (Complaint at ¶ 58). The Complaint was filed on or about July 11, 2008. Therefore, As stated in above, plaintiff alleges that she was "constructively discharged" on March (1997).
statute of limitations. *Dana v. Oak Park Marina, Inc.*, 230 A.D.2d 204, 210, 660 N.Y.S.2d 906

intentional infliction of emotional distress in New York, it is governed by the same one year
Since reckless infliction of emotional distress is encompassed within the tort of

3. PLAINTIFF'S CLAIM OF RECKLESS INFLECTION OF EMOTIONAL DISTRESS IS TIME BARRED AND MUST BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(B)(6)

12(b)(6).
intentional infliction of emotional distress must be dismissed pursuant to FED. R. CIV. P.

emotional distress, *supra*). *Dillon v. City of New York*, 261 A.D.2d 34, 704 N.Y.S.2d 1 (1st Dept. 1999). In addition, the parameters of the negligent infliction of emotional distress tort are extremely narrow. *See Nevlin v. Citibank, N.A.*, 107 F.Supp.2d 333, 346 (S.D.N.Y. 2000). New York courts have only recognized this tort in very limited circumstances, namely, where plaintiff suffered physical trauma or was caused to fear for her immediate physical safety, in situations where plaintiff herself was in Justice Cardozo's "zone of danger," when an immediate family member was killed or injured, when a plaintiff was wrongly notified of a near relative's death, or when a deceased family member's remains were improperly handled – all as the result of the negligent conduct of the defendant. *See Campoverde*, 2002 WL 31163804.

As with all negligence claims, a plaintiff must, as an absolute prerequisite to bringing such a tort claim, aver that the defendant owed *that plaintiff* a duty that was specific to her. *Morris v. U.S.*, 102 F.3d 693, 696 (2d Cir. 1996). In this case, there was no duty owed to the plaintiff, and no such duty has even been alleged by the Plaintiff. *See Kelly v. Chase Manhattan Bank*, 717 F. Supp. 227, 235 (S.D.N.Y. 1989). Plaintiff does not even attempt to allege that any defendant breached a duty owed to plaintiff.

Plaintiff has failed to even remotely establish that she suffered an unreasonable endangerment to her physical safety which was the result of anyone's negligent conduct. Further, based upon the allegations in the Complaint, any reasonable objective inquiry turning on whether plaintiff's physical safety actually was endangered will result in the conclusion that it was not. *Campoverde*, 2002 WL 31163804.

Additionally, in plaintiff's third cause of action (simply entitled infliction of emotional distress) plaintiff combines all three New York State theories of law (intentional, reckless and negligence) into a single cause of action with the apparent hope that the Court will fashion a

Electronically Filed

Plaintiffs have failed to state a cause of action, and moreover, their alleged actions are clearly time barred. Defendants Colleen IP and Donald J. Ranft respectfully request an order granting defendants' motion to dismiss plaintiff's third cause of action infliction of emotional distress" in its entirety due to the expiration of the statute of limitations and plaintiff's failure to state a claim upon which relief can be granted pursuant to FED. R. CIV. P. 12(b)(6) and an order awarding defendants such other and further relief as may be just and proper.

IV. CONCLUSION

Plaintiff's "third cause of action" must be dismissed under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted. action compounds three distinct causes of action, against two different defendants, into one cause of action. The confusing and ultimately deficient claim that plaintiff tries to plead in her third cause of action does not set forth the basis to support any claim for infliction of emotional distress, whether intentional, reckless or negligent; let alone against any particular defendant. Plaintiff's "third cause of action" must be dismissed under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Dated:

Tarrytown, New York
August 25, 2008

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELODY M. LAROCCA

Plaintiff,

-against-

COLLEN IP, INTELLECTUAL PROPERTY
LAW, P.C., and DONALD J. RANFT, as Aider
and Abettor,

Defendants.

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Plaintiff, MELODY M. LAROCCA, by her attorneys, Lyons McGovern, LLP, for her
complaint against the defendants herein, respectfully alleges:

NATURE OF ACTION

1. This is an action for deprivations, of Plaintiff, MELODY M. LAROCCA'S
(hereinafter "MS. LAROCCA") rights guaranteed her by reason of Title VII, 42 U.S.C. Section
2000e, et seq., and related state law claims.

PARTIES

2. MS. LAROCCA, is a citizen of the United States and resides in Cortlandt Manor,
New York.

3. Defendant COLLEN IP, INTELLECTUAL PROPERTY LAW, P.C. (hereinafter
"COLLEN IP") has its principal place of business at 80 South Highland Avenue, Ossining, New
York, Westchester County. Upon information and belief, COLLEN IP is a professional
corporation, existing under the laws of the State of New York.

4. Upon information and belief, at all times relevant to the instant matter, Defendant
DONALD J. RANFT (hereinafter "RANFT"), who is being sued personally and in his individual
capacity, was a managing partner in COLLEN IP. Upon information and belief, Defendant
RANFT is a resident of Hershey, Pennsylvania.

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COMPLAINT
Index No.
JURY TRIAL
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U.S. DISTRICT COURT

08 CIV. 6274
JUDGE ROBINSON

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8. MS. LARocca, a female, was hired by the COLLEN IP a law firm that specializes in intellectual property law, as a part-time paralegal in February 2006. MS. LARocca was initially assigned as a litigation paralegal responsible for providing paralegal support to the litigation attorneys in the firm.

FACTS

7. Venue is proper in this district pursuant to 28 U.S.C. §1391 because many of the material facts and injuries alleged herein occurred within the Northern Counties of the Southern District of New York. Such acts include practices and conduct violative of Title VII. In addition, venue is proper in this district pursuant to 28 U.S.C. §1391 because defendant's principal place of business is in this judicial district.

6. With respect to MS. LARocca's Title VII claims, on or about May 21, 2007, she filed a Charge of Discrimination with the New York State Division of Human Rights, alleging discrimination premised upon gender and sexual harassment. More than one hundred and eighty days have elapsed since that filing and a Notice of Right to Sue has been issued by the Equal Employment Opportunity Commission ("EEOC").

7. Venue is proper in this district pursuant to 28 U.S.C. §1391 because many of the material facts and injuries alleged herein occurred within the Northern Counties of the Southern District of New York. Such acts include practices and conduct violative of Title VII. In addition, venue is proper in this district pursuant to 28 U.S.C. §1391 because defendant's principal place of business is in this judicial district.

5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1132 and 1343 and supplemental jurisdiction pursuant to 28 U.S.C. §1367. Jurisdiction is premised upon the existence of diversity of citizenship, a federal question and deprivations of federally protected rights. This is an action for monetary damages, a declaratory judgment, permanent injunctive relief, and reasonable attorneys fees and costs. This action arises under Title VII, 42 U.S.C. §2000e. MS. LARocca's state law claims are interposed in accordance with the Court's pendent jurisdiction.

JURISDICTION AND VENUE

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the litigation attorneys at the firm.

IP. MS. LAROCCHA's initial assignment with COLLEN IP was to provide legal support to management. In addition, RANFT handles all of the patent prosecution work for COLLEN to day operations of COLLEN IP, including personnel decisions, IT support, and office 13. As the managing partner of COLLEN IP, RANFT was responsible for the day

against RANFT.

prior to the events referred to in the complaint, complaints of harassment were made sexually harassing behavior, or should have known about it. Upon information and belief, COLLEN IP and its management knew about RANFT's discriminatory and 12.

over the COLLEN IP employees, including MS. LAROCCHA to carry out the harassment. sexual relations with MS. LAROCCHA. RANFT utilized his actual and apparent authority utilized his position and authority as managing partner of COLLEN IP in order to obtain employment at COLLEN IP despite MS. LAROCCHA's continual requests to stop. RANFT a course of conduct to isolate, sexually harass and intimidate MS. LAROCCHA during her 11. RANFT through his position as managing partner of COLLEN IP, engaged in

requests by RANFT to have sex with him.

because MS. LAROCCHA refused to meet with RANFT outside of the office, and subjected to inappropriate comments about her appearance; denied advancement in COLLEN IP (mail) as to her personal life and sexual activity; repeated and continual sexual and being subjected to continual and repeated comments and inquiries (both verbally and by e- RANFT, a supervising and managing partner at COLLEN IP, including but not limited to: subjected to repeated, intentional and malicious sexual harassment and intimidation by 10. During the course of her employment at COLLEN IP, MS. LAROCCHA was

would discuss a transition to a full time position towards the end of 2006 or early 2007. COLLEN IP, RANFT, the hiring partner for COLLEN IP, told MS. LAROCCHA that he paralegal. MS. LAROCCHA owned a jewelry business. When MS. LAROCCHA was hired by 9. MS. LAROCCHA began her employment with COLLEN IP as a part-time

LITDOC05:478368.3

her repeated protestations.

18. RANFT continued his sexual harassment of MS. LARocca notwithstanding

remarks became more frequent, overt and inappropriate.

uncomfortable with RANFT and as time went on RANFT'S subtle sexual gestures and RANFT what he wanted he would say "I missed you." MS. LARocca became increasingly door being closed and having to be alone with RANFT. When MS. LARocca would ask instruct MS. LARocca to shut the door. MS. LARocca was never comfortable with the where RANFT would have all of the lights off in the office with the shades drawn and 17. MS. LARocca would be continuously summoned by RANFT to his office

and end the hostile environment would not respond.

RANFT addressed MS. LARocca in a harassing manner, MS. LARocca, in order to try RANFT by responding to him, in words or substance: leave me alone. Other times when 16. MS. LARocca sought to end the hostile environment being created by

temporary and that he had the power to reconsider seating arrangements at anytime.

extreme disappointment to MS. LARocca and told MS. LARocca that the space was requested that MS. LARocca go with over to the new building - RANFT expressed across the street from its principal building. One of the attorneys moving over there 15. In April and/or May 2006, COLLEN IP decided to lease a temporary location

LARocca's co-workers.

station and the overall attention he gave MS. LARocca was also recognized by MS. The oddity and frequency of RANFT'S telephone calls and visits by MS. LARocca's work always pass by MS. LARocca's work station and try and interact with MS. LARocca. mail MS. LARocca requesting MS. LARocca meet with him in his office. RANFT would LARocca did not work directly with RANFT, RANFT would constantly telephone or e-LARocca and created an extreme hostile environment. Despite the fact that MS. constructive discharge, RANFT methodically and continuously sexually harassed MS. 14. From the very beginning of employment, and continuing until her

LITDOCS:478368.3

tell anyone of RANFT'S continuing sexual harassment, particularly given RANFT'S status

24. MS. LARocca did not know what to do. MS. LARocca felt powerless to

RANFT given the boldness and sexual nature of the comments.

office you have a perfect body." MS. LARocca was becoming more and more afraid of

look beautiful" and another time stated to MS. LARocca "out of all of the women in the

23. During meetings in late August 2006, RANFT said to MS. LARocca "you

appropriate and asked RANFT to stop. RANFT did not.

not let me touch her sexually." MS. LARocca told RANFT his comments were not

relationship with her husband and then proceeded to state to MS. LARocca "my wife will

22. During an August 2006 meeting RANFT asked MS. LARocca about her

interaction professional.

inappropriate and vulgar despite MS. LARocca's requests to stop and keep their

mental illness. RANFT'S comments and actions during these meetings became more

matters and problems he was having with his wife, including claims that his wife had

21. During the Tuesday and Thursday meetings RANFT discussed personal

RANFT on such a continual and regular basis.

if she knew RANFT was going to change the requirements that forced her to meet with

times a week. MS. LARocca would have not have taken the back up docking clerk role

reason or explanations insisted that MS. LARocca meet with RANFT in person several

for the firm. Once MS. LARocca took over the back up clerk position, RANFT without

20. In addition, MS. LARocca also took over the role of back up docking clerk

assigned to work with him in the patent prosecutions and to work with the litigation team.

and preferred working in the litigation. RANFT said he did not care. MS. LARocca was

LARocca told RANFT said that she was more comfortable in the litigation practice area

assign MS. LARocca to patent prosecution to work directly with him. When MS.

19. In and around June 2006, without reason or explanation, RANFT decided to

LITDOC5478366.3

on patent prosecutions.

take MS. LARocca off patent prosecution, nevertheless MS. LARocca stopped working cannot stop thinking about you." MS. LARocca was terrified. RANFT never agreed to be forced to quit. RANFT offered an apology and tried to hug MS. LARocca, saying "I

29. MS. LARocca told RANFT to take her off patent prosecution or she would

comment that she began to cry in RANFT's office.

MS. LARocca if sex with her husband was pleasing. MS. LARocca was so upset by this husband must not be there for you because you work so many jobs." RANFT callously asked RANFT asked MS. LARocca about her relationship with her husband, saying "your relationship with his wife and about the infrequency of the sex he was having with her.

28. In September 2006 during a meeting RANFT again began talking about his

building.

further reminded MS. LARocca that he could always move MS. LARocca back to his

27. MS. LARocca was forced to continue to work directly with RANFT. RANFT

attorney that "he calls the shots."

LARocca off their cases to work with RANFT. RANFT refused and told the litigation that MS. LARocca was needed on the litigation team and could RANFT stop pulling MS. information and belief, the litigation attorney (also a subordinate to RANFT) told RANFT that she was not comfortable working with RANFT (without providing details). Upon jeopardizing her employment, MS. LARocca told a litigation attorney she was working for

26. In late August 2006, in hopes of getting away from RANFT without

at the firm. MS. LARocca had nowhere to go to raise her concerns and fears.

IP assigned RANFT with the responsibility to handle personnel and human resource issues MS. LARocca to utilize in order to complain about RANFT's actions. Instead COLLEN

25. COLLEN IP did not have any sexual harassment policies or procedures for

RANFT and the founding members Jane and Jess Collen were first cousins.

as the managing partner of COLLEN IP. MS. LARocca was further worried that because

LITDOC-478368.8

30. MS. TAROCCA thought that this incident by RANFT would be the last and given her return exclusively to litigation matter. MS. TAROCCA thought the harassment would stop. MS. TAROCCA was wrong. RANFT continued to telephone her and send inappropriate e-mails to her, even when RANFT was working out of his home in Pennsylvania.

31. In October 2006, RANFT told MS. TAROCCA that pursuant to their initial agreement there was still a possibility that COLLEN IP could offer MS. TAROCCA a full time position. In need of additional money and with the hopes and expectations that RANFT would back off and leave her alone, MS. TAROCCA told RANFT that she would be interested. RANFT stated that he would only discuss the full time job with MS. TAROCCA if MS. TAROCCA went to lunch with him out of the office. MS. TAROCCA told RANFT she would not meet him outside of the office.

32. Again in November 2006, RANFT asked MS. TAROCCA if she was interested in the full time position. RANFT stated again that he would only discuss the full time position if MS. TAROCCA went out to dinner or lunch with him. MS. TAROCCA told him she would not meet with him outside the office. RANFT became frustrated and agitated towards her. RANFT would say things like "we belong together" or "why didn't I meet you 14 years ago."

33. Based upon RANFT'S insistence that MS. TAROCCA have lunch or dinner with him outside of the office and MS. TAROCCA'S refusal, MS. TAROCCA never had the opportunity to hold a full time position at COLLEN IP.

34. RANFT'S sexual advances became almost an every day occurrence and RANFT refused to take no for an answer. RANFT summoned MS. TAROCCA to his office under the pretense of office supply issues or docking duties and make comments about MS. TAROCCA'S clothing and body. RANFT would lean over MS. TAROCCA and say "Why don't you show some cleavage? You don't like your cleavage? There isn't anything wrong with it." MS. TAROCCA felt demeaned, humiliated and frightened.

LITDOCS:478888.9

40. As MS. LAROCCA was crying RANFT said to MS. LAROCCA "let me give you a hug." RANFT and stated to MS. LAROCCA, "I only think of you when I have sex with my wife." RANFT physically grabbed MS. LAROCCA and tried to hug her. MS.

point I will not let you." MS. LAROCCA started to cry. to MS. LAROCCA "I know you don't want to have sex with me and once I get you to that both adults let's get in your car and go." Then in an angry and sadistic tone RANFT stated around in his office. MS. LAROCCA was terrified. RANFT said to MS. LAROCCA "we are going to do something about it. RANFT became angry and explosive throwing papers MS. LAROCCA told RANFT he was out of line and if he did not stop she was

39. intercourse with me." toe and when you can't take it anymore. I'll stop. I won't allow you to have sexual choice, I'll pay. I know you don't want to have sex with me. I'll massage you from head to LAROCCA "we are both adults- get in your car and drive. I'll follow. Stop at a place of your summoned her to RANFT'S office and asked how she was doing. RANFT then said to MS. 38. When MS. LAROCCA returned to the office in January 2007 RANFT

due to an agreed upon time off for her jewelry business. 37. During the last week of December 2006 MS. LAROCCA was out of the office have the locks changed.

36. There was also another incident where MS. LAROCCA and a few other female co-workers noticed someone had been tampering with the lighting in the women's bathroom. All of the women suspected it was RANFT that tampered with the women's bathroom. Despite their request, COLLEN IP refused to call the police to investigate or

taken by RANFT. there were personal items missing from MS. LAROCCA'S desk which she was certain were feeling? Are you ignoring me?" MS. LAROCCA felt threatened by these e-mails. In addition, her office. RANFT would send MS. LAROCCA e-mails "Are you alone? How are you 35. MS. LAROCCA would arrive to the office early and often be the only one in

LITDOC8:478388.3

these allegations to the Jane Colleen's attention, another founding member of the firm. MS.

46. The supervising litigation attorney suggested that MS. LAROCCA bring LAROCCA or the supervising litigation attorney to refer to or follow.

45. Again, there was no sexual harassment policy at COLLEEN IP for MS. attorney that she was afraid to be near RANFT.

and told her everything that RANFT had done to her. MS. LAROCCA told her supervising attorney that she was afraid to be near RANFT.

44. The next day MS. LAROCCA met with her supervising litigation attorney LAROCCA'S face, a look the co-worker described as one of a "deer in headlights."

When the co-worker walked into RANFT'S office she could not believe the look on MS. there would be nothing to stop RANFT. MS. LAROCCA was frightened and in utter shock. consider my offer." MS. LAROCCA could not believe what she was hearing and knew that she made sure she left the door open. RANFT stated to MS. LAROCCA "be smart re- ordered MS. LAROCCA into his office. When MS. LAROCCA walked into RANFT'S office RANFT'S office. As MS. LAROCCA and the co-worker passed by RANFT'S office RANFT something in the attic file room. In order to access the attic file room, one had to pass by

43. The next morning the same co-worker asked MS. LAROCCA to help her with

the women in the office and it is known throughout the office that RANFT targets women. and the co-worker said she was not surprised. The co-worker said RANFT harasses all of

42. MS. LAROCCA decided to tell a female co-worker about all of the incidents the office.

harassment and intimidation she was being subjected to by RANFT. Jess Colleen was not in Jess Colleen one of the founding partners of the COLLEEN IP to let him know about the RANFT was going to hurt her. The following Monday MS. LAROCCA tried to meet with

41. MS. LAROCCA was terrified and knew that if she did not do something in his face. MS. LAROCCA ran out of RANFT'S office.

response to MS. LAROCCA was "I knew I made you weak in the knees" with a sadistic look LAROCCA immediately pulled away from RANFT and fell to the ground. RANFT'S

LITDOCS:475358.3

LARROCCA disagreed because Jane Colleen and RANFT are first cousins and MS. LARROCCA knew that Jane Colleen would do nothing to RANFT.

47. MS. LARROCCA and the supervising attorney meet with Jess Colleen in his office and MS. LARROCCA told him everything. There were no complaint procedures or policies at COLLEN IP to be followed or implemented. Jess Colleen did not follow any policy or procedure.

48. Instead of undertaking an independent investigation about MS. LARROCCA'S allegations against RANFT, Jess Colleen set up a conference call with RANFT with her and the supervising litigation attorney in the room. MS. LARROCCA could not believe Jess Colleen was doing this to her – even the supervising litigation attorney was concerned with his approach. MS. LARROCCA was humiliated and now terrified that RANFT would retaliate against her.

49. Jess Colleen then requested Jane Colleen to come into the office to discuss MS. LARROCCA'S allegations she stated in an "I could not be bothered tone" that it was probably nothing and told Jess Colleen to handle it.

50. During the telephone conference RANFT did not deny his vulgar and harassing action towards her.

51. Later, MS. LARROCCA provided Jess Colleen copies of the e-mails she received from RANFT further evidencing the sexual harassment she was subjected to by RANFT.

52. Despite this clear evidence of sexual harassment and intimidation by RANFT Jess Colleen and COLLEN IP did nothing to RANFT.

53. MS. LARROCCA told Jess Colleen that she was afraid of RANFT. Rather than take action against RANFT Jess Colleen suggested MS. LARROCCA to take a week off. MS. LARROCCA told Jess Colleen that it should be RANFT that should be sent home not her. Jess Colleen's response was that RANFT was too important to the firm to just send home.

LITDOCS:478358.9

AS AND FOR A FIRST CAUSE OF ACTION
(Sex Discrimination Under Title VII)

still pending.

District Attorney's Office with Harassment in the Second Degree. The criminal action is Village of Ossining police department. RANFT was charged by the Westchester County protect herself from RANFT, on March 12, 2007, MS. LAROCCA filed a complaint with the 60. Because COLLEN IP failed to take action against RANFT and order to

harassed by RANFT and COLLEN IP was aware of his threat to other women in the office. LAROCCA was told by a former co-worker that other women in the firm have been position with the firm and his alleged importance to the business of the firm. MS. women in the office, including MS. LAROCCA, but chose to ignore it given RANFTS 59. Upon information and belief, COLLEN IP knew RANFT harassed other

COLLEN IP to get away from RANFT and RANFTS continuing sexual harassment. 58. On March 12, 2007, MS. LAROCCA had no other choice but to leave

hurt MS. LAROCCA. nothing to protect her and RANFT would be free to further harass, threaten and physically 67. It was at this point MS. LAROCCA knew COLLEN IP was going to do

LAROCCA asked Jess Collen to change the lock and code to the building but he refused. did not want RANFT to have any access to her including access to her work area. MS. 56. MS. LAROCCA confronted Jess Collen about his inaction and told him she in the office without consequence.

LAROCCA was afraid RANFT would be further empowered to harass her and other women 55. Based upon COLLEN IP's failure to take action against RANFT, MS. disciplined and returned to work "business as usual."

in the morning and she was copied on a firm wide e-mail from RANFT. RANFT was not 54. Incredibly, the very next day MS. LAROCCA was in the office and first thing

LITDOCS:478368.3

and monetary damages as a result of COLLEN IP'S and RANFT'S discriminatory acts.

69. MS. LAROCCA is now suffering and will continue to suffer irreparable injury

Abettor of the discrimination against MS. LAROCCA.

68. Defendant RANFT is liable under New York Executive Law as an Aider and

Executive Law.

67. Defendant COLLEN IP is liable Plaintiff's "employer" under New York

seq.

the terms and conditions of her employment in violation of New York Executive Law § 296, et

discrimination, Defendants COLLEN IP and RANFT discriminated against MS. LAROCCA in

based upon sexual favors, and failing to act upon MS. LAROCCA'S complaints of

hostile work environment because of her sex, conditioning advancement in the COLLEN IP

66. By the acts and practices described above, including but not limited to creating a

Complaint, and incorporates them by reference as if fully set forth herein.

65. The MS. LAROCCA repeats the allegations of paragraphs one through 64 of her

(Sex Discrimination Under New York Executive Law)

AS AND FOR A SECOND CAUSE OF ACTION

and monetary damages as a result of COLLEN IP'S discriminatory acts.

64. MS. LAROCCA is now suffering and will continue to suffer irreparable injury

63. Defendant COLLEN IP is liable as Plaintiff's "employer" under Title VII.

conditions of her employment in violation of Title VII, 42 U.S.C. § 2000e, et seq.

discrimination, Defendant COLLEN IP discriminated against MS. LAROCCA in the terms and

based upon sexual favors, and failing to act upon MS. LAROCCA'S complaints of

hostile work environment because of her sex, conditioning advancement in the COLLEN IP

62. By the acts and practices described above, including but not limited to creating a

Complaint, and incorporates them by reference as if fully set forth herein.

61. The MS. LAROCCA repeats the allegations of paragraphs one through 60 of her

LITDOC8-478358.3

WHEREFORE, MS. LAROCCA respectfully requests that this Court will:

(a) Declare the acts and practices complained herein are in violation of Title VII and New York State Executive Law § 296 et seq.;

(b) Grant as against each defendant such front pay, back wages, compensatory damages and damages for her mental anguish and humiliation as the jury may award;

75. MS. LAROCCA hereby demands a trial by jury on all claims and issues so

JURY TRIAL DEMANDED

74. Defendants COLLEN IP and RANFT acted maliciously and with the specific intent to oppress and harm MS. LAROCCA and/or with reckless disregard of the consequences of their actions, is now suffering and will continue to suffer irreparable injury and monetary damages.

73. The aforesaid emotional and/or psychological injuries sustained by MS. LAROCCA were wholly caused by reason of the intentional, reckless and/or negligent acts of Defendants COLLEN IP and RANFT as described herein.

72. MS. LAROCCA has been caused to suffer and continues to suffer from severe and disabling shock, distress, anguish, sorrow, depression and other loss of enjoyment of life.

71. By the acts and practices described above, Defendants COLLEN IP and RANFT have caused MS. LAROCCA to suffer severe and permanent emotional and psychic injury.

70. The MS. LAROCCA repeats the allegations of paragraphs one through 69 of her Complaint, and incorporates them by reference as if fully set forth herein.

AS AND FOR A THIRD CAUSE OF ACTION (Infliction of Emotional Distress)

LITDOC8-478858.1

- (c) Imposing upon the Defendants such punitive damages as the jury may grant;
- (d) An award of attorneys fees, costs and disbursements; and
- (c) Such other and further relief as the Court deems just and proper.

Dated: July 10, 2002

Sleepy Hollow, New York

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